

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

FERNANDO BRIOSOS,

No. C 10-02834 LB

Plaintiff,

**ORDER CONTINUING HEARING ON
MOTION TO DISMISS**

v.

WELLS FARGO BANK, and FIDELITY
NATIONAL TITLE INSURANCE CO,

[ECF No. 29]

Defendants.

On January 20, 2011, Plaintiff Fernando Briosos filed his second amended complaint. ECF No. 28. In his second amended complaint, Briosos adds a quiet title claim against a new defendant, Fidelity National Title Insurance, Co. *Id.* at 8, ¶ 54. Briosos has until April 20, 2011 to serve Fidelity National. Fed. R. Civ. P. 4(m) (setting 120-day time frame by which pleadings must be served); *see also McGuckin v. United States*, 918 F.2d 811, 813 (9th Cir. 1990) (construing the 120-day limit of Rule 4(j) as running from the filing of the second amended complaint that named the United States as a new defendant). The court **ORDERS** Briosos to comply with the requirements of Rule 4(m) of the Federal Rules of Civil Procedure and to file proof of service by April 27, 2011. If Briosos fails to comply with this order, the court will dismiss the action without prejudice as to Fidelity National. Fed. R. Civ. P. 4(m).

Rule 73(a) of the Federal Rules of Civil Procedure requires consent from all parties before a magistrate judge may exercise jurisdiction pursuant to Section 636(c) of Title 28 of the United States

1 Code. See *In re Litigation Relating to the Riot of September 22, 1991 at the Maximum Security Unit*
2 *of the Montana State Prison*, 85 F.3d 637 (9th Cir. 1994) (unpublished table decision); *Caprera v.*
3 *Jacobs*, 790 F.2d 442, 443-44 (5th Cir. 1986). Fidelity National has not yet appeared or consented to
4 the undersigned's jurisdiction. Therefore, the court **CONTINUES** the scheduled April 7, 2011
5 hearing on Defendant Wells Fargo Bank's motion to dismiss until May 5, 2011. The current
6 briefing schedule stands.

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8 **IT IS SO ORDERED.**

9 Dated: March 15, 2011



10 LAUREL BEELER
11 United States Magistrate Judge
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